

Docket No.: 3023-005
File No. 1228.42361X00

PATENT

REMARKS**BEST AVAILABLE COPY**

Claims 1-18 are pending in this application. Claims 5 and 12 are amended herein. Claim 1 is independent.

The Examiner's participation in a teleconference on February 27, 2006, is noted with appreciation.

Claim 12 is objected to on informality grounds. Claim 12 is amended as suggested by the Examiner to address the noted concern.

Claims 4-6, 7-8 and 16-18 stand rejected under 35 USC §101, as drawn to non-statutory subject matter. Claim 5 is amended to address the noted concern. To the extent not addressed by amendment, the rejection is respectfully traversed.

A concern is raised that the reference to "a fragment of the fractured bone" in claims 3 (inadvertently not referenced in the rejection), 4, 8, 16 and 18 is an attempt to claim a part of a human body. However, it is respectfully submitted that rather than claiming a portion of a human body, the recital relates to a feature of the "locking screw". More particularly, as recited in the preamble, the inventive nail is for insertion into a cavity formed in a fractured bone. In accordance with claims 3, 4, 8, 16 and 18, a feature of the locking screw is that it extends through a second screw hole and into a fragment of the fractured bone into the cavity of which the nail is inserted. Hence the locking screw as recited must be configured to extend from the first screw hole, through the second screw hole, and into the fragment of the fractured bone.

Accordingly, it is respectfully requested that the rejection of claims 4-6, 8 and 16-18 be reconsidered and withdrawn in view of the above, and the modifications of claim 5.

Concern is also raised regarding claim 7 (on which claim 8 depends) that the recital of "the naked eye of the surgeon" is also an attempt to claim a human body part. However, it is respectfully submitted that, rather than attempting to claim a human body

Docket No.: 3023-005
File No. 1228.42361X00

PATENT

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part, the reference to the naked eye of the surgeon establishes a feature of the screw hole in the end plate, which is disposed at the first end of the proximal portion of the nail and attached to the cylindrically shaped, tubular body. More particularly, claim 7 recites that the end plate includes a screw hole configured to engage a locking screw and direct the locking screw into the fractured bone. The claim also requires that, with the intramedullary nail fully inserted into the fractured bone cavity, the screw hole in the end plate be visible to the naked eye of the surgeon. Thus, the reference to the surgeon's eye establishes a limitation on the screw hole in the end plate.

Accordingly, it is respectfully requested that the rejection of claim 7 also be reconsidered and withdrawn, in view of the above.

Claims 1-18 stand rejected under 35 USC §112, first paragraph, as non-enabled. The rejection is respectfully traversed.

As discussed with the Examiner during the above-referenced teleconference, as described, for example, in paragraph 0021 of the published application, an end plate is attached to the cylindrically shaped, tubular body at the first end of the proximal portion of the nail. This end plate is shown in Figure 6B, and identified with the reference numeral 608. (See also Figures 8A-8B and 9A-9B). The end plate is sometimes referred to as a face of the proximal end 602 of the nail 600. As further described in paragraph 0022 of the published application, the end plate closes the opening at the first end of the proximate portion of the nail, and may serve as a cap plate which more or less seals the first end of the cylindrically shaped tubular body of the proximal portion of the nail.

Paragraph 0023 of the published application goes on to describe how first and second threaded screw holes may be included in the end plate, such that the screw holes are visible to the naked eye of the surgeon, when the intramedullary nail is fully inserted into the fractured bone cavity, thereby facilitating the insertion of a locking

Docket No.: 3023-005
File No. 1228.42361X00

PATENT
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screw without the use of a jig. Accordingly, it is respectfully submitted that those skilled in the art would clearly understand from the specification and figures, how to manufacture and use an intramedullary nail having an end plate as recited in the subject claims.

Therefore, it is respectfully requested that the rejection be reconsidered and withdrawn.

Claims 1-12, 15 and 17-18 stand rejected under 35 USC §102(b) as anticipated by Marino (U.S. Patent No. 4,733,654). Claim 11 stands rejected under 35 USC §103(a) as obvious over Marino in view of Comte, et al. (U.S. Patent No. 4,875,475). Claims 13, 14 and 17 stand rejected under 35 USC §103(a) as obvious over Marino in view of Warburton (U.S. Patent No. 6,527,775). The rejections are respectfully traversed.

In accordance with independent claim 1, an intramedullary nail must include a cylindrically shaped tubular body extending between first and second ends and having a curved longitudinal axis.

While the Examiner notes that Marino discloses a fluted end 8 with curved outer surfaces, it is respectfully submitted that the curved outer surfaces do not correspond to a curved longitudinal axis of a cylindrically shaped tubular body, as described, for example, with reference to Figures 8A and 8B, as having a proximal end which is curved approximately at a angle of 20 to 30 degrees off vertical in one plane and 5 to 7 degrees off vertical in another plane.

Marino is directed to a conventional nail for insertion through the medullar canal as described in the background section of the present application, with reference to, for example, Figures 2A-5B. Indeed, Marino proposes a nail of the type which the present invention is directed to improving upon.

Accordingly, it is respectfully submitted that Marino lacks any teaching or

Docket No.: 3023-005
File No. 1228.42361X00

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suggestion of a cylindrically shaped, tubular body which has a curved longitudinal axis extending between the first and second ends of the body.

Therefore, it is respectfully requested that the rejection of claims 1-12, 15 and 17-18 be reconsidered and withdrawn. Other features, such as those recited in claims 3-4, 7-8 and 18, are believed to further distinguish over the applied prior art.

Claim 11 is also distinguishable on at least the grounds discussed above.

With regard to claims 13, 14 and 16 (inadvertently noted as 17), the Official Action relies on Warburton as disclosing (i) an intramedullary nail which is curved in two planes at the angles of curvature recited and (ii) a screw of the recited diameter.

However, as disclosed in the relied upon disclosure of Warburton (see column 13, lines 33-36), as best understood, Warburton only teaches a curvature in a single plane. Hence, it is respectfully submitted that Warburton is distinguishable from claims 13-14 on this ground alone. Additionally, Warburton lacks various other features required by claims 13-14, including a cylindrically shaped, tubular shaft portion.

With regard to claim 16, while it is acknowledged that Warburton discloses a rod having a diameter within a range encompassing the recited diameter in claim 16 of no less than 7mm, claim 16 requires that the locking screw (not the nail itself) have a diameter of no less than 7mm. As understood, Warburton (and therefore the applied combination), lack any suggestion of such a screw diameter.

It is respectfully submitted that the application is in condition for allowance, and the Examiner is respectfully requested to contact the undersigned by telephone at the below listed local telephone number, in order to expedite resolution of any remaining issues and further to expedite passage of the application to issue, if any further comments, questions or suggestions arise in connection with the application.

To the extent necessary, Applicants petition for an extension of time under 37 CFR § 1.136. Please charge any shortage in fees due in connection with the filing of

Docket No.: 3023-005
File No. 1228.42361X00

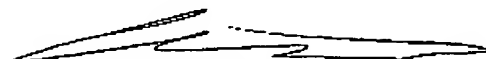
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Respectfully submitted,

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